

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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:
JESSY MANGAHAS, *on behalf of herself and all others* :
similarly situated, :
:
Plaintiff, : 22-cv-04150 (LJL)
:
-v- : ORDER
:
EIGHT ORANGES INC. et al, :
:
Defendants. :
:
-----X

LEWIS J. LIMAN, United States District Judge:

Consistent with this Court's opinion on Plaintiff's motion for preliminary certification and for Court-authorized notice to similarly situated persons, attached are revisions to Plaintiff's proposed Notice of Collective Action Lawsuit.

SO ORDERED.

Dated: October 18, 2022
New York, New York


LEWIS J. LIMAN
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

**JESSY MANGAHAS, on behalf of herself
and all others similarly situated,**

Plaintiff,

-against-

**EIGHT ORANGES INC. DBA THE BAO;
CHIBAOLA, INC. DBA ULUH; JOANNE
HONG BAO, individually, and RICHARD
LAM, individually,**

Defendants.

Case No. 22 Civ. 04150 (LJL)

NOTICE OF COLLECTIVE ACTION LAWSUIT

**If you were employed as a server, busser, food runner, bartender, or barback
at The Bao or Uluh Restaurant between September 16, 2019 and the present,
please read this notice.**

A collective action lawsuit may affect your legal rights.

This is a court-authorized notice. This is not a solicitation from a lawyer.

This Notice is to advise you of the lawsuit that has been filed against Eight Oranges Inc. DBA The Bao, Chibaola, Inc. DBA Uluh, Joanne Hong Bao, and Richard Lam (collectively “the Bao and Uluh Restaurants”) and advise you of your legal rights.

- The lawsuit claims the Bao and Uluh Restaurants violated federal law by requiring:
 1. Servers, bussers, runners, and bartenders (together “Front of House Workers”) share tips with a tip-ineligible managers, expeditors, dessert cooks, and soup dumpling cooks;
 2. Failing to provide proper notice of applying the “Tip credit” under federal law;
 3. Front of House Workers to perform an excessive amount of “side work,” past 20% of their work time; and
 4. Requiring Front of House Workers to pay for all or a portion of required uniforms without reimbursements.

Questions?

Contact Armando A. Ortiz of Fitapelli & Schaffer, LLP • (212) 300-0375 • Info@fslawfirm.com

- The lawsuit seeks to recover money owed in back wages and additional damages known as “liquidated damages,” along with interest, attorneys’ fees, and costs.
- Defendants deny any violation of the Fair Labor Standards Act (“FLSA”) or any other law and maintain that they paid workers appropriately for all of the hours they worked.
- The Court has authorized the parties to send out this notice of the lawsuit. The Court has not decided who is right and who is wrong. The Court is not endorsing the merits of this lawsuit or advising you to participate in this lawsuit and no determination has been made that you are owed any tips, minimum and/or overtime wages, or any damages.
- Your legal rights may be affected, and you have a choice to make now.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT	
ASK TO BE INCLUDED	<p>If you choose to join this lawsuit, you will be bound by any ruling, settlement, or judgment. You will also share in any proceeds from a settlement or judgment.</p> <p><u>If you wish to be included in this lawsuit and represented by Fitapelli & Schaffer LLP, you must complete the form at the end of this Notice.</u></p>
DO NOTHING	<p>By doing nothing, you will not be included in the portion of the lawsuit relating to claims under the Fair Labor Standards Act. This means that you give up the possibility of getting money or benefits that may come from a trial or settlement in this lawsuit if those bringing the lawsuit are successful. However, you do not give up your right to bring your own action, but the limitations period on your claim continues to run. Each day that you do not take action to protect your claims, they diminish.</p>

- Your options are explained in this notice. To ask to be included in the lawsuit, you must act before 60 days after notice, 2022.

1. Why did I get this notice?

You are getting this notice because Defendants’ records show that you work or worked at The Bao or Uluh Restaurant as a server, busser, food runner, bartender, or barback between ~~May 20, 2018~~ and the present.

September 16, 2019

Questions?

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2. What is this lawsuit about?

This lawsuit is about whether The Bao and Uluh Restaurant properly paid its tipped workers in accordance with federal and New York State Labor Law. In the portion of the lawsuit brought under the FLSA, the Complaint alleges that The Bao and Uluh Restaurant were not entitled to pay Plaintiff and other tipped workers the tip credit minimum wage because The Bao and Uluh Restaurant required Front of House Workers to share tips a manager/assistant manager, dessert cooks, expeditors, and soup dumpling cooks at the Restaurants (tip-ineligible employees), required Front of House Workers to spend more than 20% of their time performing non-tip producing side work, failed to adequately inform Front of House Workers of their intention to apply the tip credit to their wages, and required Front of House Workers to pay for uniforms without reimbursements.

3. What damages is the lawsuit seeking?

The lawsuit is seeking to recover unpaid minimum wages and overtime, the value of tips improperly shared, unlawful deduction, spread of hours, other wage violations, and “liquidated damages,” which doubles the amount of wages owed. The lawsuit is also seeking recovery of costs and attorneys’ fees. It also seeks damages under the New York Labor Law.

4. What happens if I join the lawsuit?

If you choose to join this lawsuit, you will be bound by any ruling, settlement or judgment, whether favorable or unfavorable. You will also share in any proceeds from a settlement or judgment favorable to the Collective.

By joining this lawsuit, you designate Plaintiff Jessy Mangahas as your representative, and to the fullest extent possible, you designate Plaintiff and her counsel to make decisions on your behalf concerning the case, the method and manner of conducting the case, and all other matters pertaining to this lawsuit. Decisions made and agreements entered into by Plaintiff relating to the lawsuit will be binding on you if you join the lawsuit.

While this suit is pending, as part of the discovery process you may be asked to provide documents or information relating to your employment at The Bao and Uluh. For this reason, if you join the lawsuit you should preserve all documents relating to your employment currently in your possession. You may be asked to appear at a deposition, and, potentially testify at a trial in this matter.

5. Can The Bao or Uluh Restaurant and/or my current employer retaliate or fire me if I join the lawsuit?

No. It is a violation of Federal and state law for the you to be fire, discipline, or in any manner discriminated or retaliated against for taking part in this case.

No underline

Questions?

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6. Can I participate in this lawsuit even though, due to my immigration status, I did not work or am not working at the The Bao or Uluh Restaurant legally?

Yes. Your immigration status **does not** affect your entitlement to recover back wages or to participate in this lawsuit.

7. How do I ask the Court to include me in the case?

Enclosed is a form called "Plaintiff Consent Form." **If you choose to join this lawsuit, it is extremely important that you read, sign, and promptly return the Plaintiff Consent Form.** An addressed and postage paid envelope is enclosed for your convenience. Should the enclosed envelope be lost or misplaced, the Plaintiff Consent Form must be sent to the following address:

**Fitapelli & Schaffer, LLP
28 Liberty Street, 30th Floor
New York, New York 10005**

You can also fax the Plaintiff Consent Form to (212) 481-1333 or e-mail the Plaintiff Consent Form to Info@fslawfirm.com. The signed Plaintiff Consent Form must be postmarked by **[60 days from notice], 2022**.

If your signed Plaintiff Consent Form is not postmarked by [60 days from notice], 2022, you may not be able to participate in the federal law portion of this lawsuit or share in a monetary recovery.

8. Do I have a lawyer in this case?

The Plaintiff in this lawsuit is represented by Fitapelli & Schaffer, LLP, 28 Liberty Street, 30th Floor, New York, New York 10005, (212) 300-0375, www.fslawfirm.com. If you submit a signed Consent Form, you will be represented by Fitapelli & Schaffer, LLP.

9. How will the lawyers be paid?

The named Plaintiff has entered into a contingency fee agreement with Plaintiff's counsel. Under this agreement, you are not responsible for paying any of the attorneys' fees or costs expended in the lawsuit. Plaintiff's counsel will be paid as follows: if there is a settlement, Plaintiff's counsel may ask the Court to award it up to 1/3 of any recovery obtained or may attempt to negotiate payment of attorneys' fees separate from and in addition to the FLSA Collective's recovery, plus reimbursement of their out-of-pocket costs. If there is no recovery, you pay nothing.

10. What happens if I do nothing at all?

If you choose to not join this lawsuit, you will not be affected by any settlement or judgment rendered in this case, whether favorable or unfavorable. You may file your own lawsuit should you choose to do so with any attorney of your choosing.

Questions?

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11. This notice has been authorized by the Court.

This notice and its contents have been authorized by Honorable Judge Lewis J. Liman of the United States District Court for the Southern District of New York. The Court has not yet ruled on whether Plaintiff's claims or Defendants' defenses have any merit.

Please do not write or call the Court about this notice.

Although the Court has approved the sending of this notice, the Court expresses no opinion on the merits of this lawsuit.

Questions?

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PLAINTIFF CONSENT FORM

1. I consent to be a party plaintiff in the lawsuit, *MANGAHAS v. EIGHT ORANGES INC., et al.*, U.S. District Court, Southern District of New York, Civil Action No. 22 Civ. 4150 (LJL), in order to seek redress for violations of the Fair Labor Standards Act, pursuant to 29 U.S.C. § 216(b).

2. By signing and returning this consent form, I hereby designate Plaintiff Mangahas and her counsel Fitapelli & Schaffer, LLP ("the Firm") to represent me and make decisions on my behalf concerning the litigation and any settlement. I understand that reasonable costs expended on my behalf will be deducted from any settlement or judgment amount on a pro rata basis among all other plaintiffs. I understand that the Firm ~~will~~ petition the Court for attorney's fees from any settlement or judgment in the amount of the greater of: (1) the "lodestar" amount, calculated by multiplying reasonable hourly rates by the number of hours expended on the lawsuit, or (2) 1/3 of the gross settlement or judgment amount. I agree to be bound by any adjudication of this action by a court, whether it is favorable or unfavorable.

Name (printed)

Email

Signature

Date

Position(s) Held

Telephone Number

Dates of Employment

Restaurant(s) Worked

Mail, Fax or Email to:
Fitapelli & Schaffer, LLP
28 Liberty Street, 30th Floor
New York, New York 10005
Fax: (212) 481-1333
E-mail: Info@fslawfirm.com

Questions?

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